

Default, Motion for

A Guide to Resources in the Law Library

- **Default:** “If a party fails to comply with an order of a judicial authority or a citation to appear or fails without proper excuse to appear in person or by counsel for trial, the party may be . . . defaulted by the judicial authority.” CONN. PRACTICE BOOK § 17-19 (2004 ed.).
- **Default vs. judgment upon default:** “A default is not a judgment. It is an interlocutory order of the court, the effect of which is to preclude the defendant from making any further defense in the case so far as liability is concerned. A judgment upon default, on the other hand, is the final judgment in the case which is entered after the default and after a hearing in damages.” Esposito v. Pinecrest Country Club, Inc., 24 Conn. Sup. 81, 82, 186 A.2d 822 (1962).
- **Effect of default:** “A default ‘admits the material facts that constitute a cause of action’; *Travelers Indemnity Co. v. Rubin*, 209 Conn. 437, 445, 551 A.2d 1220 (1988); and ‘entry of default, when appropriately made, conclusively determines the liability of a defendant.’ *Ratner v. Willametz*, 9 Conn. App. 565, 579, 520 A.2d 621 (1987). Despite the entries of default, had the defendants sought to challenge the right of the plaintiffs to maintain their action, or had they intended to prove any matter of defense, they would have been permitted to do so at the hearing in damages upon written notice to the plaintiffs. See Practice Book § 367 [now 17-34]. Moreover, pursuant to Practice Book § 374 [now 17-40], the defendants would have been permitted to appear and offer evidence to reduce the amount of damages claimed without giving any notice. LaRosa v. Kline, 36 Conn. App. 501, 503-504, 651 A.2d 1324 (1995).”

Sections in this chapter:

§ 1 Failure to appear

- § 1a Motion for default for failure to appear and judgment
- § 1b Setting aside (opening) a default for failure to appear prior to judgment upon default
- § 1c Judgment upon default for failure to appear

§ 2 Failure to plead

- § 2a Motion to set aside default for failure to plead
- § 2b Judgment upon default for failure to plead

§ 3 Other grounds for default

§ 4 Hearing in damages

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Figure 1 Motion for default for failure to plead

Figure 2 Motion to open default for failure to plead

Figure 3 Motion for default for failure to disclose a defense

Figures in this Chapter

Figure 1 Motion for default for failure to plead

Figure 2 Motion to open default for failure to plead

Figure 3 Motion for default for failure to disclose a defense

Section 1

Failure to Appear

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion for default for failure to appear (without judgment).

SEE ALSO:

- [§ 1a Motion for Default for Failure to Appear and Judgment](#)
- [§ 1b Setting Aside \(Opening \) a Default for Failure to Appear](#)

DEFINITION :

- "If a party fails to comply with an order of a judicial authority or a citation to appear . . . the party may be . . . defaulted by the judicial authority." CONN. PRACTICE BOOK § 17-19 (2004 ed.).
- "If no appearance has been entered for any party to any action on or before the second day following the return day, any other party to the action may make a motion that a . . . default be entered for failure to appear.." CONN. PRACTICE BOOK § 17-20(a) (2004 ed.).
- "... motions for default for failure to appear shall be acted on by the clerk upon filing and shall not be printed on the short calendar. The motion shall be granted by the clerk if the party who is the subject of the motion has not filed an appearance." CONN. PRACTICE BOOK § 17-20(c) (2004 ed.).
- **Soldiers' and Sailors' Relief Act:** "The provisions of Section 17-21[Defaults under Soldiers' and Sailors' Relief Act] shall not apply to such motions, but such provisions shall be complied with before a judgment may be entered after default." CONN. PRACTICE BOOK § 17-20(c) (2004 ed.).
- **Notice:** "It shall be the responsibility of counsel filing a motion for default for failure to appear to serve the defaulting party with a copy of the motion. Service and proof thereof may be made in accordance with Sections 10-12, 10-13 and 10-14. Upon good cause shown, the judicial authority may dispense with this requirement when judgment is rendered.." CONN. PRACTICE BOOK § 17-20(b)
- **Automatic set aside:** "If the defaulted party files an appearance in the action prior to the entry of judgment after default, the default shall automatically be set aside by the clerk." CONN. PRACTICE BOOK § 17-20(c) (2004 ed.).

STATUTES:

- CONN. GEN. STATS. (2003)
 - § 52-84. **When judgment by default may be rendered.** "When any process has been served on any defendant and returned to court, if he does not appear on or before the second day after the return day, judgment by default may be rendered against him."
 - § 52-87. Continuance on account of absent or nonresident defendant. Exception

COURT RULES:

- CONN. PRACTICE BOOK (2004 ed.)
 - § 3-2. Time to file appearance

§ 9-1. Continuance for absent or nonresident defendant
§ 17-20. Motion for default . . . for failure to appear
§ 17-21. Defaults under Soldiers' and Sailors' Relief Act

FORMS:

- 2 JOEL M. KAYE ET AL., CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
Form 103.1-C. Certification of service of pleadings on appearing parties
Form 107.8-A, Motion for default for failure to appear.
- RALPH P. DUPONT, DUPONT ON CONNECTICUT CIVIL PRACTICE (2003 ed.). Chapter 17. Judgments.
F.17-20. Motion for default for failure to appear, p. 269.
- KIMBERLEY A. PETERSON, CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT (1998). Chapter 14. Pleadings: motions against defendants who do not file an appearance.
Example 1. Motion for default for failure to appear

RECORDS & BRIEFS:

- CONN. APPELLATE COURT RECORDS AND BRIEFS (September/October 1998), Blue Cross Blue Shield of Connecticut v. Gurski, 49 Conn. App. 731, 715 A.2d 819 (1998).

CASES:

- Hydropress Environmental v. Paladino, No. CV 96-0390175 (Jul. 18, 2001), 2001 WL 951305. While the procedure of § 17-20 (c) was not followed in the present case, the defendant has directed the court to no authority whatsoever for the proposition that such a procedural flaw deprives the court of jurisdiction over the subject matter. The fact that Practice Book § 17-20(c) provides that the default should have been automatically set aside in the present case before the damages judgment was rendered does not leave the court without subject matter jurisdiction. It merely provides the defendant with an opportunity to file a timely motion to open and set aside the improperly entered judgment. The defendant found himself in a situation which he could have readily corrected by filing a timely motion to open, and his failure to do so must be deemed a waiver of this issue. Instead, he inexplicably waited nearly four years to raise an argument that he could and should have filed within four months of receiving notice of the judgment in accordance with Gen. Stats. § 52-212.
- Dontigney v. Warden, No. CV 98-058 54 16 (Oct. 26, 1999), 1999 WL 1063407. "The file indicates that defendant was defaulted for failure to appear on June 25, 1999. An appearance was filed by an Assistant Attorney General, on behalf of defendant, on July 30, 1999. Since no judgment (for damages) had entered after the default, it was automatically set aside by the filing of an appearance. Prac. Bk. Sec. 17-20(c)."
- World Saving & Loan Assn. v. Baylis, No. CV 34 93 29 S (Nov. 10, 1998), 1998 WL 811451. "It is not necessary to address the motion to set aside the default at this time because the default will automatically be set aside by the clerk if Longshore, the defaulted party, files an appearance in this action prior to the entry of judgment after default. Practice Book § 352, now Practice Book (1998 Rev.) § 17-20."

WEST KEY NUMBERS:

- Judgments # 92-134
92. Nature of judgment by default
96. Persons against whom judgment by default may be rendered
103. Default of appearance

ENCYCLOPEDIAS:

- 46 AM. JUR. 2D *Judgments*
Defaults §§ 265-321

TEXTS & TREATISES:

- RALPH P. DUPONT, DUPONT ON CONNECTICUT CIVIL PRACTICE (2001 ed.).
Chapter 17. Judgments
§ 17-20.1. Defaults on failure to appear, entry of
- RENEE BEVACQUA BOLLIET ET AL., STEPHENSON'S CONNECTICUT CIVIL Procedure (3rd ed. 1997).
§ 96d. Defaults for failure to appear.
- JEANINE M. DUMONT, PLEADINGS AND PRETRIAL PRACTICE: A DESKBOOK FOR CONNECTICUT LITIGATORS (1998 ed.).
Section V. Timing, waivers and defaults
3. Motion for default
a. Motion for default for failure to appear (p. 71)
- KIMBERLEY A. PETERSON, CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT (1998).
Chapter 14. Pleadings: motions against defendants who do not file an appearance.
Section II. Motion for default for failure to appear

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Section 1a

Motion for Default for Failure to Appear and Judgment

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion for default for failure to appear and a motion for judgment used in contract actions seeking judgment under CONN. PRACTICE BOOK § 17-25 (2003).

**TREATED
ELSEWHERE:**

- [§ 1b. Setting Aside \(Opening \) a Default for Failure to Appear](#)

DEFINITION :

- “The motion for Default for Failure to Appear and Judgment is a procedure which allows the plaintiff to file a Motion for Default for Failure to Appear simultaneously with a Motion for Judgment and an order requesting weekly payments. The motion is reviewed by the civil clerk’s office and is forwarded to a judge for approval and for signature.” HARTFORD SUPERIOR COURT CIVIL CLERK’S OFFICE, PRACTICE BOOK SECTION 17-25 MANUAL. Reprinted in 2 RALPH P. DUPONT, DUPONT ON CONNECTICUT CIVIL PRACTICE (2003 ed.), Appendix 1, p. 171.
- **Promise to Pay Liquidated Sum:** “In any action based upon an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest, a reasonable attorney’s fee and other lawful charges, the procedure set forth in Section 17-20 and in Sections 17-25 through 17-28 shall be followed, if there is a default of appearance.” CONN. PRACTICE BOOK § 17-24(a) (2004 ed.).

STATUTES:

- CONN. GEN. STAT. (2003).
§ 52-84. **When judgment by default may be rendered.** “When any process has been served on any defendant and returned to court, if he does not appear on or before the second day after the return day, judgment by default may be rendered against him.”

COURT RULES:

CONN. PRACTICE BOOK (2004 ed.)
§ 3-1. Time to file appearance
§ 17-23. Contract actions to pay a definite sum where there is a default for failure to appear; Limitations
§ 17-24. —Promise to pay liquidated sum
§ 17-25. —Motion for default and judgment; Affidavit of debt; Military affidavit; Bill of costs; Debt instrument
§ 17-26. —Order of weekly payments
§ 17-27. —Entry of judgment

- § 17.28. —Enforcement of judgment
- § 17-29. Default motion not on short calendar
- § 17-33. When judgment may be rendered after a default

FORMS:

“When moving for default and judgment pursuant to Sections 17-25 through 17-28, a party shall move for default and judgment on forms prescribed by the office of the chief court administrator.” CONN. PRACTICE BOOK § 17-24(b) (2004 ed.).

- JD-CV-49. Motion for Default for Failure to Appear, Judgment and Order for Weekly Payments
- JD-CV-50. Notice of Judgment and Order for Weekly Payments
- JD-CV-52. Affidavit of Debt

COURT PUBLICATIONS:

- HARTFORD SUPERIOR COURT CIVIL CLERK’S OFFICE, PRACTICE BOOK SECTION 17-25 MANUAL. Reprinted in 2 RALPH P. DUPONT, DUPONT ON CONNECTICUT CIVIL PRACTICE (2003 ed.), Appendix 1, pp. 171-193.

TEXTS & TREATISES:

- KIMBERLEY A. PETERSON, CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT (1998). Chapter 14. Pleadings: motions against defendants who do not file an appearance.
 - Section III. Motion for default for failure to appear and judgment
 - A. Required documents
 - B. Filing the Motion for Default for Failure to Appear and Judgment
 - C. 20-day delay to enforce judgment
- RENEE BEVACQUA BOLLIER ET AL., STEPHENSON’S CONNECTICUT CIVIL Procedure (3rd ed. 1997).
 - § 96d. Defaults for failure to appear (see especially p.285).
 - § 101b. Contract actions for liquidated damages
- 2 RALPH P. DUPONT, DUPONT ON CONNECTICUT CIVIL PRACTICE (2003 ed.).
 - Chapter 17. Judgments
 - E.3. Default of appearance in contract action: judgment
 - § 17-24.1. Attorney’s fees; Recovery of
 - § 17-25.1. Affidavit of debt
 - § 17-25. 26. Order for weekly payments

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Table 1 Default in Summary Process

<h1>Default in Summary Process</h1>	
CONN. GEN. STATS. (2003)	<p>§ 47a-26a. "If the defendant appears but does not plead within two days after the return day, the complainant may file a motion for judgment for failure to plead, served upon the defendant in the manner provided in the rules adopted by the judges of the Superior Court for the service of pleadings. If the defendant fails to plead within three days after receipt of such motion by the clerk, the court shall forthwith enter judgment that the complainant recover possession or occupancy with his costs."</p> <p>§ 47a-26c. "All pleadings, including motions, shall advance at least one step within each successive period of three days from the preceding pleading or motion."</p>
CONN. PRACTICE BOOK (2004 ed.)	<p>§ 17-30(a). "If the defendant in a summary process action does not appear within two days after the return day and a motion for judgment for failure to appear and the notice to quit signed by the plaintiff or plaintiff's attorney and endorsed, with his or her doings thereon, by the proper officer or indifferent person who served such notice to quit is filed with the clerk, the judicial authority shall, not later than the first court day after the filing of such motion, enter judgment that the plaintiff recover possession or occupancy of the premises with costs, and execution shall issue subject to the statutory provisions."</p> <p>§ 17-30(b). "If the defendant in a summary process action appears but does not plead within two days after the return day, the plaintiff may file a motion for judgment for failure to plead, served in accordance with Sections 10-12 through 10-17. If the defendant fails to plead within three days after receipt of such motion by the clerk, the judicial authority shall forthwith enter judgment that the plaintiff recover possession or occupancy with costs."</p> <p>§ 17-33(b). "Since the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned, the judicial authority, at or after the time it renders the default, notwithstanding Section 17-32 (b), may also render judgment in foreclosure cases, in actions similar thereto, in summary process actions, and in any contract action where the damages are liquidated, provided the plaintiff has also made a motion for judgment and provided further that any necessary affidavits of debt or accounts or statements verified by oath, in proper form, are submitted to the judicial authority."</p>
Forms	<p>2 JOEL M. KAYE ET AL. CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).</p> <p>Form 107.8-D. Motion for default for failure to plead—Summary process</p>
Texts & Treatises	<p>RENEE BEVACQUA BOLLIET ET AL., STEPHENSON'S CONNECTICUT CIVIL Procedure (3rd ed. 1997).</p> <p>§ 101c. Failure to appear for trial, foreclosure, summary process</p>
Cases	<p><u>Mackenzie v. Rascati</u>, No. SPNH 941241586, Judicial District of Housing Court Session at New Haven, 13 Conn. L. Rptr. 450, 451 (January 17, 1995). "The Court finds that the Defendant's request for discovery establishes good cause for extension of time to plead."</p>

Table 2 Default in Family Matters

Default in Family Matters	
CONN. PRACTICE BOOK (2004 ed.)	<p>§ 25-51(a). "Any case claiming a dissolution of marriage, legal separation, or annulment in which the defendant has failed to file an appearance may be assigned a date certain for disposition as an uncontested matter pursuant to Section 25-50. If the defendant has not filed an appearance by the date assigned for disposition, the case may proceed to judgment without further notice to such defendant. Section 17-20 concerning motions for default shall not apply to such cases."</p> <p>§ 25-52. "If a party fails to appear in person or by counsel for a scheduled disposition, the opposing party may introduce evidence and the case may proceed to judgment without further notice to such party who failed to appear."</p>

Table 3 Default in Foreclosure Cases

Default in Foreclosure Cases	
CONN. PRACTICE BOOK (2004 ed.)	<p>§ 17-33(b). "Since the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned, the judicial authority, at or after the time it renders the default, notwithstanding Section 17-32 (b), may also render judgment in foreclosure cases, in actions similar thereto, in summary process actions, and in any contract action where the damages are liquidated, provided the plaintiff has also made a motion for judgment and provided further that any necessary affidavits of debt or accounts or statements verified by oath, in proper form, are submitted to the judicial authority."</p>

Table 4 Default in Small Claims Actions

Default in Small Claims Actions	
CONN. PRACTICE BOOK (2004 ed.)	<p>§ 24-16. Answers; Requests for Time to Pay</p> <p>§ 24-24. Judgments in Small Claims; When Presence of the Plaintiff or Representative is Not Required for Entry of Judgment</p> <p>§ 24-25. "If the defendant does not file an answer by the answer date and if the case does not come within the purview of Section 24-24, the clerk shall set a date for hearing and the judicial authority shall require the presence of the plaintiff or representative."</p>

Section 1b

Setting Aside (Opening) Default for Failure to Appear Prior to Judgment

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to setting aside (opening) a default for failure to appear prior to judgment upon default.

**TREATED
ELSEWHERE:**

- [§ 1a. Motion for Default for Failure to Appear and Judgment](#)

DEFINITION :

- **Automatic set aside by clerk:** “If the defaulted party files an appearance in the action prior to the entry of judgment after default, the default shall automatically be set aside by the clerk A claim for a hearing in damages shall not be filed before the expiration of fifteen days from the entry of a default under this subsection ” CONN. PRACTICE BOOK § 17-20(c) (2004 ed.).
- **Court order required:** “A motion to set aside a default where no judgment has been rendered may be granted by the judicial authority for good cause shown upon such terms as it may impose. .” CONN. PRACTICE BOOK § 17-42 (2004 ed.).
- **Prior to judgement:** “[Practice Book § 17-42, previously] Section 376 applies to all defaults and permits the court to set aside such defaults prior to judgment.” *Whalen v. Ives*, 37 Conn. App. 7, 13, 654 A.2d 905 (1995), cert. den. 233 Conn. 905.
- **For good cause:** “*Deercliff Homeowners Assn. v. Seraya*, No. CV-97-0482805-S (Feb. 28, 2001). “Concerning the determination as to whether to open a default, rule of practice § 17-42 states: ‘[a] motion to set aside a default may be granted by the judicial authority for good cause shown upon such terms as it may impose.’ The court, in its discretion, may consider the presence of mistake, inadvertence, misfortune or other reasonable cause. See *Higgins v. Karp*, 243 Conn. 495, 508, 706 A.2d 1 (1998) (previously cited by the court in its November 3, 2000 order). It may consider “factors such as the seriousness of the default, its duration, the reasons for it and the degree of contumacy involved . . . [as well as] the totality of the circumstances, including whether the delay has caused prejudice to the nondefaulting party.” (Internal quotation marks and citation omitted.)

Id.

COURT RULES:

- CONN. PRACTICE BOOK (2004 ed.)
 - § 3-2. Time to file appearance
 - § 17-20. Motion for default and nonsuit for failure to appear
 - § 17-22. Notice of . . . default for failure to enter an appearance
 - § 17-42. Opening defaults where judgment has not been rendered.

CASES:

- Distassio v. Allstate Indemnity Company, 81 Conn. App. 92 (2004). "The defendant claims that the court improperly denied its motion to set aside or to open the default for failure to appear. The defendant argues that the court should have granted the motion because the court clerk improperly failed to set aside the default. Alternatively, the defendant argues that the motion itself was unnecessary because the rules of practice require the court clerk to set aside a default when the defaulting party files an appearance. We agree with the defendant's alternative argument."
- Bove v. Bove, 77 Conn. App. 355, 822 A.2d 383 (2003). "The operation of this provision of the rules of practice [§ 17-20] presumes that the person a movant seeks to default for failure to appear has been summoned properly and has not appeared. Without a proper summons, a person is not a party to the action. Here, the record is clear that the defendant Howard Bove did appear and there was a judicial determination on his motion holding that he was served improperly by attempted abode service at a place other than his usual place of abode."
- Bonenfant v. Rota, No. CV-01-0811769 S (Aug. 5, 2003) "Upon default, the plaintiff ordinarily becomes entitled to recover nominal damages . . . The right to further substantial damages remains to be established by the plaintiff at a hearing in damages." (Citations omitted.) Kloter v. Carabetta Enterprises, Inc., 186 Conn. 460, 464, 442 A.2d 63 (1982). "[The] entry of default, when appropriately made, conclusively determines the liability of a defendant . . . In an action at law, the rule is that the entry of a default operates as a confession by the defaulted defendant of the truth of the material facts alleged in the complaint which are essential to entitle the plaintiff to some of the relief prayed. It is not the equivalent of an admission of all of the facts pleaded. The limit of its effect is to preclude the defaulted defendant from making any further defense and to permit the entry of a judgment against him on the theory that he has admitted such of the facts alleged in the complaint as are essential to such a judgment. It does not follow that the plaintiff is entitled to a judgment for the full amount of the relief claimed. The plaintiff must still prove how much of the judgment prayed for in the complaint he is entitled to receive." (Internal quotation marks omitted and citation omitted.) Murray v. Taylor, 65 Conn. App. 300, 334-35, 782 A.2d 702, cert. denied, 258 Conn. 928, 783 A.2d 1029 (2001).

WEST KEY NUMBERS:

- Judgments # 135-177.
 - # 138. Right to relief in general
 - # 139. Discretion of the court
 - # 140. Judgments which may be opened or set aside
 - # 143. Excuses for default
 - # 147. Waiver of right to relief
 - # 153. Time for application
 - # 156. Stay of proceedings on judgment
 - # 177. Objections and exceptions

ENCYCLOPEDIAS:

- 46 AM. JUR. 2D *Judgments* (1994).
Defaults §§ 265-321
- Annotation, *Opening Default or Default Judgment Claimed To Have Been Obtained Because Of Attorney's Mistake As To Time Or Place Of Appearance, Trial Or Filing Of Necessary Papers*, 21 ALR3d 1255 (1968).

TEXTS & TREATISES:

- RALPH P. DUPONT, *DUPONT ON CONNECTICUT CIVIL PRACTICE* (2001 ed.).
Chapter 17. Judgments
§ 17-20.3. Setting aside default for failure to appear
—Before entry of Judgment by default
—Case pending on Hearing in Damage List
—After entry of Judgment by Default
- JEANINE M. DUMONT, *PLEADINGS AND PRETRIAL PRACTICE: A DESKBOOK FOR CONNECTICUT LITIGATORS* (1998 ed.).
Section V. Timing, waivers and defaults
3. Motion for default
b. Automatic cure of default for failure to appear (p. 71)
- RENEE BEVACQUA BOLLIER ET AL., *STEPHENSON'S CONNECTICUT CIVIL Procedure* (3rd ed. 1997).
§ 96f. Reopening defaults
g. Reopening judgments on default
- KIMBERLEY A. PETERSON, *CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT* (1998).
Chapter 14. Pleadings: motions against defendants who do not file an appearance.
Section II. Motion for default for failure to appear
A. Opening or setting aside a default
B. When a defendant fails to appear after default:
judgment
1. Hearings in Damages: C.G.S. § 52-220 et seq.
2. Motion for judgment instead of a Hearing in Damages
Section IV. Motion to Open Judgment upon Default: four month deadline
A. Contents of a Motion to Open Judgment upon Default

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Section 1c

Judgment Upon Default for Failure to Appear

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to:

1. Judgment upon (or after) Default for Failure to Appear
2. Opening or Setting aside a judgment upon default

SEE ALSO:

- [§ 1a. Setting aside \(opening\) a default for failure to appear prior to judgment](#)

DEFINITION :

- **Default vs. judgment upon default:** “A default is not a judgment. It is an order of the court the effect of which is to preclude the defendant from making any further defense in the case so far as liability is concerned. A judgment upon default, on the other hand, is the final judgment in the case” *Automotive Twins, Inc. v. Klein*, 138 Conn. 28, 33, 82 A.2d 146 (1951).
- **Judgment upon Default:** “Any judgment rendered or decree passed upon a default . . . may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant or the complainant's attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or the defendant failed to appear. The judicial authority shall order reasonable notice of the pendency of such written motion to be given to the adverse party, and may enjoin that party against enforcing such judgment or decree until the decision upon such written motion.” CONN. PRACTICE BOOK § 17-43(a) (2004 ed.).
- **Effect:** “Appearances filed thereafter [second day following the return day] in such cases shall be accepted but an appearance for a party after the entry against such party of a . . . judgment after default for failure to appear shall not affect the entry of . . . any judgment after default.” CONN. PRACTICE BOOK § 3-2 (2004 ed.).
- **Military Affidavit:** “The granting of a motion for . . . judgment after default for failure to appear shall be subject to the provisions of Sections 9-1 and 17-21. Such motion shall contain either (1) a statement that a military affidavit is attached thereto, or (2) a statement, with reasons therefor, that it is not necessary to attach a military

affidavit to the motion. CONN. PRACTICE BOOK § 17-20(e)."

STATUTES:

- CONN. GEN. STATS. (2003)
 - § 52-212. Reopening judgment upon default
 - § 52-259c. Fee to open, set-aside, modify, extend or reargue judgment

COURT RULES:

- CONN. PRACTICE BOOK (2004 ED.)
 - § 17-43. Opening judgment upon default

FORMS:

I. Motion for Judgment upon Default

- 2 JOEL M. KAYE ET AL. CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
 - Form 107.7. Judgment by Default against Corporate Defendant
 - Form 107.8. Judgment by Default against Individual Defendant.

II. Opening Judgment upon default pursuant to CONN. PRACTICE BOOK § 17-43 (2004 ed.)

- 2 JOEL M. KAYE ET AL., CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996). Form 107.8-F, Motion to Open Judgment upon default
- KIMBERLEY A. PETERSON, CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT (1998).
 - Chapter 14. Pleadings: motions against defendants who do not file an appearance.
 - Example 2, Motion to Open Judgment of Default for Failure to Appear
 - Example 3, Affidavit to be filed with Motion to Open Judgment upon Default

CASES:

- *Jackson v. R. G. Whipple, Inc.*, 225 Conn. 705, 717-718, 627 A.2d 374 (1993). "Although not every default judgment should have the same issue preclusive effect as an actual adjudication between the present parties, in the interest of judicial economy and repose for litigants, we envision some circumstances where it would be appropriate to give issue preclusive effect to a default judgment. We have previously noted, after addressing the scope of issue and claim preclusion, that the appropriate inquiry with respect to both types of preclusion is whether the party had an "adequate opportunity to litigate the matter in the earlier proceeding. . . ." (Internal quotation marks omitted.) *State v. Ellis*, supra, [197 Conn. 436,] 464-65 [498 A.2d 974 (1985)] n. 22, quoting D. Currie, "Res Judicata: The Neglected Defense," 45 U. Chi. L. Rev. 317, 342 (1978). Our decision in *Ellis* indicates that had there been a full and fair opportunity to litigate issues and such issues were necessary to a default judgment, that judgment should put to rest subsequent litigation of all issues necessary for the rendering of the default judgment."

WEST KEY NUMBERS:

- Judgments # 135-177.
 - # 138. Right to relief in general
 - # 139. Discretion of the court
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 - # 143. Excuses for default
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ENCYCLOPEDIAS:

- 46 AM. JUR. 2D *Judgments*
Defaults §§ 265-321
- James L. Buchwalter, *Annotation, Imposition Of Default Judgment Against Codefendant—Modern Treatment*, 102 ALR5th 647 (2002).
- *Annotation, Doctrine Of Res Judicata As Applied To Default Judgments*, 77 ALR2d 1410 (1961).
- James O. Pearson, *Annotation, Fraud In Obtaining Or Maintaining Default Judgment As Grounds For Vacating Or Setting Aside In State Courts*, 78 ALR3d 150 (1977).
- *Annotation, Opening Default or Default Judgment Claimed To Have Been Obtained Because Of Attorney's Mistake As To Time Or Place Of Appearance, Trial Or Filing Of Necessary Papers*, 21 ALR3d 1255 (1968).
- *Fraud In Obtaining Or Maintaining Default Judgment*, 10 POF2d 427.

TEXTS & TREATISES:

- RALPH P. DUPONT, *DUPONT ON CONNECTICUT CIVIL PRACTICE* (2001 ed.).
Chapter 17. Judgments
 - § 17-43.1. Reasonable cause; Existence of good cause of action or defense
 - § 17-43.2. Reasonable cause for failure to appear
 - § 17-43.3. Four month time limit, effect of
 - § 17-43.4. *Audita Querela*, Writ of Use and Effect of
- JEANINE M. DUMONT, *PLEADINGS AND PRETRIAL PRACTICE: A DESKBOOK FOR CONNECTICUT LITIGATORS* (1998 ed.).
- RENEE BEVACQUA BOLLIER ET AL., *STEPHENSON'S CONNECTICUT CIVIL Procedure* (3rd ed. 1997).
 - § 96g. Reopening judgments on default
- KIMBERLEY A. PETERSON, *CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT* (1998).
Chapter 14. Pleadings: motions against defendants who do not file an appearance.
Section IIB. When a defendant fails to appear after default:
Judgment
 - 1. Hearing in Damages: C.G.S. § 52-220 et seq.
 - 2. Motion for Judgment instead of a Hearing in Damages

COMPILED BY:

Lawrence Cheeseman, Connecticut Judicial Branch, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Section 2

Failure to Plead

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to a motion for default for failure to plead.
- SEE ALSO:**
- Open a Judgment of Default, Motion to
- DEFINITION :**
- **Motion for Default for Failure to Plead.** “Where a defendant is in default for failure to plead pursuant to Section 10-8, the plaintiff may file a written motion for default which shall be acted on by the clerk upon filing, without placement on the short calendar.” CONN. PRACTICE BOOK § 17-32(a) (2004 ed.).
- STATUTES:**
- CONN. GEN. STATS. (2003).
 - § 52-119. Pleading to be according to rules and orders of court.
 - § 52-120. Pleading filed by consent after expiration of time.
 - § 52-121. Pleading may be filed after expiration of time fixed, but prior to hearing on motion for default judgment or nonsuit.
 - Judgment or penalty for failure to plead.
 -
 - CONN. PRACTICE BOOK (2004 ed.)
 - § 17-31. Procedure where Party is in Default
 - § 17-32. Where Defendant is in Default for Failure to Plead
- COURT RULES:**
- FORMS:**
- RALPH P. DUPONT, DUPONT ON CONNECTICUT CIVIL PRACTICE (2003 ed.).
 - Chapter 17. Judgments
 - F.17-32. Motion for default for failure to plead, p. 272.
 - F. 17-32(1). Objection to Motion for Default [for Failure to Plead]
 - KIMBERLEY A. PETERSON, CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT (1998).
 - Chapter 15. Pleadings: Motions against defendants who do not plead
 - Example 1, Motion for Default for Failure to Plead
- CASES:**
- CAS Construction Co. v. Dainty Rubbish Service, Inc., 60 Conn. App. 294, 300, 759 A.2d 555 (2000). ‘A plaintiff cannot claim a case to the trial list (a hearing in damages) without first having obtained a default for failure to plead A hearing in damages cannot be conducted unless there has been compliance with Practice Book § 363, now 17-31 If a judgment is rendered prematurely, it must be set aside if it deprives a party of a right to which there is entitlement under the rules of practice.’
- WEST KEY NUMBERS:**
- WEST KEY NUMBER: Judgments # 92-134
 - # 92. Nature of judgment by default

ENCYCLOPEDIAS:

- # 96. Persons against whom judgment by default may be rendered
- # 105. Default in pleading
- 46 AM. JUR. 2D *Judgments*
Defaults §§ 265-321
- Annotation, *Opening Default or Default Judgment Claimed To Have Been Obtained Because Of Attorney's Mistake As To Time Or Place Of Appearance, Trial Or Filing Of Necessary Papers*, 21 ALR3d 1255 (1968).

TEXTS & TREATISES:

- RALPH P. DUPONT, *DUPONT ON CONNECTICUT CIVIL PRACTICE* (2001 ed.).
 - Chapter 17. Judgments
 - § 17-31.1. Discovery and pleading defaults; Obtaining judgment of dismissal or judgment after default entered
 - § 17-32.1. Defaulted party, pleadings by
- JEANINE M. DUMONT, *PLEADINGS AND PRETRIAL PRACTICE: A DESKBOOK FOR CONNECTICUT LITIGATORS* (1998 ed.).
 - Section V. Timing, waivers and defaults
 - 3. Motion for default
 - d. Automatic cure of default for failure to plead
 - e. Motion to dismiss and strike and requests to revise
 - f. Hearings in damages
 - g. Military affidavit
 - h. Effect of default
- KIMBERLEY A. PETERSON, *CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT* (1998).
 - Chapter 15. Pleadings: Motions against defendants who do not plead
 - Section I. Motion for Default for Failure to Plead
 - A. Applicable sections
 - B. No short calendar
 - C. After default is granted
- RENEE BEVACQUA BOLLIER ET AL., *STEPHENSON'S CONNECTICUT CIVIL Procedure* (3rd ed. 1997).
 - § 96e. Other grounds for default. Failure to plead

COMPILED BY:

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Figure 1 Motion for default for failure to plead

DOCKET NO.: CV-97-0082651S : SUPERIOR COURT
CAS CONSTRUCTION CO., INC. : J.D. OF MIDDLESEX
V. : AT MIDDLETOWN
DAINTY RUBBISH SERVICE, INC. : AUGUST 11, 1997

MOTION FOR DEFAULT FOR FAILURE TO PLEAD

The Plaintiff, CAS Construction Co., Inc., in the above entitled action hereby moves that a default be entered against the Defendant, Dainty Rubbish Service, Inc. as no responsive pleading has been filed by or on behalf of the Defendant and the time for filing such pleading has passed.

PLAINTIFF,

CAS CONSTRUCTION CO., INC.

BY: _____

Name

Firm

Address

Phone Number

ORDER

The foregoing Motion having been presented to the Court

It is hereby ORDERED: GRANTED/DENIED.

BY THE COURT

Judge/Clerk

CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid, first class
mail to _____ on this 11th day of August, 1997.

Name

Section 2a

Setting Aside (Opening) Default for Failure to Plead

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to setting aside (opening) a motion for default for failure to plead.

SEE ALSO:

- [§ 2b. Judgment upon default for failure to plead](#)

DEFINITION :

- **Automatic set aside by clerk.** "If a party who has been defaulted under this section files an answer before a judgment after default has been rendered by the judicial authority, the clerk shall set aside the default. ." CONN. PRACTICE BOOK § 17-32(b) (2004 ed.).
- **Court order required:** "If a claim for a hearing in damages or a motion for judgment has been filed the default may be set aside only by the judicial authority." CONN. PRACTICE BOOK § 17-32(b) (2004 ed.).
- "A motion to set aside a default where no judgment has been rendered may be granted by the judicial authority for good cause shown upon such terms as it may impose. As part of its order the judicial authority may extend the time for filing pleadings or disclosure in favor of a party who has not been negligent. Certain defaults may be set aside by the clerk pursuant to Sections 17-20 and 17-32." CONN. PRACTICE BOOK § 17-42 (2004 ed.).
- "We conclude that once the defendant invoked the court's discretion pursuant to § 376 [now 17-42], he was bound by the court's order thereon and was not entitled to the benefit of § 363A [now § 17-32] with respect to the same default." *Whalen v. Ives*, 37 Conn. App. 7, 14, 654 A.2d 798 (1995).

COURT RULES:

- .CONN. PRACTICE BOOK (2004 ed.).
 - § 17-32. Where defendant is in default for failure to plead
 - § 17-42. Opening defaults where judgment has not been rendered

FORMS:

- RALPH P. DUPONT, DUPONT ON CONNECTICUT CIVIL PRACTICE (2003 ed.).
 - Chapter 17. Judgments
 - F.17-32(1). Objection to motion for default for failure to plead, p. 273
 - F17-32(2). Motion to strike defaulted defendant's responsive pleadings, p. 274
- KIMBERLEY A. PETERSON, CIVIL LITIGATION IN CONNECTICUT,

ANATOMY OF A LAWSUIT (1998).

Chapter 15. Pleadings: motions against defendants who do not file pleadings.

Example 1, Motion for default for failure to plead

CASES:

- CAS Construction Co. v. Dainty Rubbish Service, Inc., 60 Conn. App. 294, 300, 759 A.2d 555 (2000). ‘A plaintiff cannot claim a case to the trial list (a hearing in damages) without first having obtained a default for failure to plead A hearing in damages cannot be conducted unless there has been compliance with Practice Book § 363, now 17-31 If a judgment is rendered prematurely, it must be set aside if it deprives a party of a right to which there is entitlement under the rules of practice.’
- Brunswick School, Inc. v. Hutter, 53 Conn. App. 455, 460, 730 A.2d 1206 (1999). “Finally, on June 17, 1997, the trial court, D’Andrea, J., denied the defendant’s request to open the default. Practice Book § 17-42 provides that “[a] motion to set aside a default where no judgment has been rendered may be granted by the judicial authority for *good cause* shown upon such terms as it may impose. . . .” (Emphasis added.) In its February 20, 1998 articulation, the trial court, Lewis, J., noted that the defendant had provided outdated medical documentation in support of his motion to open the default including a hospital record of admission on October 6, 1996, three months prior to the trial, and a letter from a physician indicating that the defendant had hypertension. In articulating its basis for denying the defendant’s motion for reconsideration, the trial court found it significant that the defendant did not provide any reference to a more current report from a physician. In making ‘every reasonable presumption in favor of [the court’s] action’; Walton v. New Hartford, . . . [223 Conn. 155, 169, 612 A.2d 1153 (1992)]; we conclude that the trial court did not abuse its discretion in entering the default against the defendant and in denying the defendant’s motion to open the default.”
- Whalen v. Ives, 37 Conn. App. 7, 13, 654 A.2d 798 (1995). “Section 376 [now section 17-42] applies to all defaults and permits the court to set aside such defaults prior to judgment. A party who is defaulted for a reason other than failure to plead must use this section. A defendant who wants to file a pleading that precedes the answer may also resort to this section. In contrast, § 363A [now § 17-32] applies only to defaults for failure to plead and only when the defendant elects to waive the right to file preceding pleadings by filing an answer prior to judgment.”

WEST KEY NUMBERS:

- Judgments # 135-177.
 - # 138. Right to relief in general
 - # 139. Discretion of the court
 - # 140. Judgments which may be opened or set aside
 - # 143. Excuses for default
 - # 147. Waiver of right to relief
 - # 153. Time for application
 - # 156. Stay of proceedings on judgment
 - # 177. Objections and exceptions

ENCYCLOPEDIAS:

- 46 AM. JUR. 2D *Judgments* (1994).
Defaults §§ 265-321
- James L. Buchwalter, *Annotation, Imposition Of Default Judgment Against Codefendant—Modern Treatment*, 102 ALR5th 647 (2002).

- Annotation, *Doctrine Of Res Judicata As Applied To Default Judgments*, 77 ALR2d 1410 (1961).
- Annotation, *Opening Default or Default Judgment Claimed To Have Been Obtained Because Of Attorney's Mistake As To Time Or Place Of Appearance, Trial Or Filing Of Necessary Papers*, 21 ALR3d 1255 (1968).

TEXTS & TREATISES:

- RALPH P. DUPONT, *DUPONT ON CONNECTICUT CIVIL PRACTICE* (2001 ed.).
Chapter 17. Judgments
§ 17-32.1. Defaulted party. Pleadings by
- JEANINE M. DUMONT, *PLEADINGS AND PRETRIAL PRACTICE: A DESKBOOK FOR CONNECTICUT LITIGATORS* (1998 ed.).
Section V. Timing, waivers and defaults
3. Motion for default (pp. 71-72)
d. Automatic cure of default for failure to plead
e. Motion to dismiss and strike and requests to revise
f. Hearings in damages
g. Military affidavit
h. Effect of default
- RENEE BEVACQUA BOLLIET ET AL., *STEPHENSON'S CONNECTICUT CIVIL Procedure* (3rd ed. 1997).
§ 96e(1). Failure to plead
- KIMBERLEY A. PETERSON, *CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT* (1998).
Chapter 14. Pleadings: motions against defendants who do not file pleadings
II. Two ways to open a default
A. By the clerk
B. When opening a default requires a court order

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Table 5 Unreported decisions: Motion to set aside default

Unreported Decisions	
<u>Fiamengo v. Duffy</u> , No. CV00-0801777S (Apr. 3, 2001), 2001 WL 417650	<p>“Practice Book § 17-32 (b) provides that ‘[a] claim for a hearing in damages or motion for judgment shall not be filed before the expiration of fifteen days from the date of the issuance of the default under this section.’ The plaintiffs claim, having been filed only four days after the granting of his request for a default, was thus filed too early. The same Practice Book section also provides that ‘[i]f a claim for a hearing in damages or a motion for a judgment has been filed the default may be set aside only by the judicial authority.’ Practice Book § 17-32 (b). Construing these two provisions together, it would appear that a defendant’s remedy when, as here, a claim for a hearing in damages is filed too early is to move to set aside the default under Practice Book § 17-42. This section provides that ‘[a] motion to set aside a default where no judgment has been rendered may be granted by the judicial authority for good cause shown upon such terms as it may impose.’ Certainly the plaintiff’s premature filing of a claim for a hearing in damages may constitute the ‘good cause’ that would justify setting aside the default under this section. Because, in this case, the defendant failed to file a motion to set aside the default, the court will not relieve him of his default for failure to plead.”</p>
<u>Deercliff Homeowners Assn. v. Seraya</u> , No. CV-97-0482805-S (Feb. 28, 2001), 2001 WL 283015	<p>Concerning the determination as to whether to open a default, rule of practice § 17-42 states: “[a] motion to set aside a default may be granted by the judicial authority for good cause shown upon such terms as it may impose.” The court, in its discretion, may consider the presence of mistake, inadvertence, misfortune or other reasonable cause. See <u>Higgins v. Karp</u>, 243 Conn. 495, 508, 706 A.2d 1 (1998) (previously cited by the court in its November 3, 2000 order). It may consider ‘factors such as the seriousness of the default, its duration, the reasons for it and the degree of contumacy involved . . . [as well as] the totality of the circumstances, including whether the delay has caused prejudice to the nondefaulting party.’ (Internal quotation marks and citation omitted.) <i>Id.</i></p> <p>As noted, except for its procedural arguments, which the court addressed above, and its advancement of what it claims are meritorious defenses, which the court addresses below, Seraya has advanced no argument explaining why the defaults should be vacated. It has not even contended, for example, that the November, 1997 default was the result of mistake, inadvertence, misfortune or other reasonable cause. Instead, it has chosen to act as though that court action, taken over three years ago, did not exist. It has done so in the face of being put on notice of it again, by the court, on the record, on September 18, 2000. Deercliff also pleaded the existence of this default in its objection to the September, 2000 motion to open the April, 2000 default for failure to plead.”</p>

Unreported Decisions (cont'd)

<p><u>Holbrook v. Cadle Prop. of Connecticut</u>, No. CV97-0567429 (Dec. 4, 2000), 2000 WL 187204</p>	<p>The defendant did not file a Motion to Set Aside the Default pursuant to Practice Book § 17-42. Furthermore, the defendant did not file a Notice of Defenses within the time period allowed in Practice Book §§ 17-34 and 17-35. Absent such a notice, the defendant is not entitled to have the trier of fact consider evidence for the purpose of contradicting any of the allegations in the plaintiff's complaint, except such as relating to the amount of damages. In this case, the issue of damages related to the requested assignment of civil penalties and equitable obligations. Practice Book § 17-34.</p>
<p><u>Barile v. Lenscrafters, Inc.</u>, No. CV98-0415048 (Jun. 8, 2000), 2000WL 804664</p>	<p>"Our Rules do not contemplate opening of a default upon demand. There must be some good and sufficient basis for the motion."</p>
<p><u>Papadopoulos v. Josem</u>, No. CV99 0173837 S (May 12, 2000), 2000 WL 670024.</p>	<p>"If a defaulted party wishes to file a motion to strike, the party must first move the court to open the default pursuant to Practice Book § 376 [now § 17-42]. <u>McGhie v. Reliable Taxi Co.</u>, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 280107 (August 4, 1993, Leheny, J.) (8 C.S.C.R. 904).' <u>Martin v. Martins</u>, Superior Court, judicial district of Waterbury, Docket No. 124326 (July 26, 1996, Pellegrino, J.); see also <u>Kapral v. King Conn Enterprises, Inc.</u>, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 320144 (January 9, 1996, Maiocco, J.); <u>Scott Swimming Pools v. Aniscovich</u>, Superior Court, judicial district of Waterbury, Docket No. 114383 (October 19, 1993, Sylvester, J.). 'A motion to strike cannot be entertained when a motion for default has been granted against the defendant and the defendant has not moved to open the default pursuant to Practice Book § 376 [now § 17-42].' (Internal quotation marks omitted.) <u>Martin v. Martins</u>, supra, Superior Court, Docket No. 124326; see also <u>Kapral v. King Conn Enterprises, Inc.</u>, supra, Superior Court, Docket No. 320144 (the motion to strike was not properly before the court since the default motion against the defendant had not been set aside); <u>McGhie v. Reliable Taxi Co.</u>, supra, 8 C.S.C.R. 904 (the motion to strike was not properly before the court since the defendant had not moved to open the default); <u>Catalina v. General Accident Ins. Co.</u>, Superior Court, judicial district of Waterbury, Docket No. 109676 (February, 1, 1993, Sylvester, J.) (same); <u>Neiman Marcus Group, Inc. v. Meehan</u>, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. 387601 (September 19, 1991, Schaller, J.) (5 Conn.L. Rptr. 16, 17) (same).</p> <p>In the present case, the defendant has not filed a motion to set aside the default pursuant to Practice Book § 17-42. See <u>Martin v. Martins</u>, supra, Superior Court, Docket No. 124326; <u>Kapral v. King Conn Enterprises, Inc.</u>, supra, Superior Court, Docket No. 320144. Thus, the defendant's motion to strike is not properly before the court, and is, accordingly, denied."</p>

Figure 2 Motion to open default for failure to plead

NO. CV-97-0082651 S

CAS CONSTRUCTION CO., INC.	:	SUPERIOR COURT
VS.	:	J.D. OF MIDDLESEX
		AT MIDDLETOWN
DAINTY RUBBISH SERVICE, INC.	:	SEPTEMBER 25, 1997

MOTION TO OPEN DEFAULT

In accordance with Section 17-42 of the Connecticut Practice Book, as amended, the defendant respectfully moves that the Court open the default entered in the above entitled action, and in support thereof respectfully submits the following:

1. The return date in this action is July 8, 1997.
2. On or about August 12, 1997, plaintiffs Motion for Default for Failure to Plead was filed.
3. On or about Friday, August 22, 1997, plaintiff filed a claim for a hearing in damages.
4. On or about Monday, August 25, 1997, defendant filed a Request to Revise.
5. Due to inadvertency, defendant's Request to Revise was not filed prior to plaintiffs aforesaid pleading.

ORAL ARGUMENT AND/OR
TESTIMONY IS REQUESTED

6. As the Request to Revise was filed one filing day after the claim for hearing in damages, no significant preparation for trial has taken place, there is no prejudice to the Olaintiff at this stage of the proceeding and the plaintiff will not have been misled in any way.

7. In accordance with Section 1-8 of the Connecticut Practice Book, as amended, defendant requests that the Court open the default in this matter in that strict adherence to the rules of pleading would work injustice to the defendant.

WHEREFORE, it is respectfully requested that this honorable Court open the default.

FOR THE DEFENDANT,

By _____
Name

ORDER

The foregoing Motion to Open having been duly heard, it is hereby ORDERED:
GRANTED/DENIED.

BY THE COURT,

Clerk/J.

Section 2b

Judgment Upon Default for Failure to Plead

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to:

1. Judgment upon (or after) Default for Failure to Plead
2. Opening or Setting aside a judgment upon default

SEE ALSO:

- [§ 2a. Setting aside \(opening\) a default for failure to plead](#)

DEFINITION :

- **Default vs. judgment upon default:** “A default is not a judgment. It is an order of the court the effect of which is to preclude the defendant from making any further defense in the case so far as liability is concerned. A judgment upon default, on the other hand, is the final judgment in the case” *Automotive Twins, Inc. v. Klein*, 138 Conn. 28, 33, 82 A.2d 146 (1951).
- **Judgment upon Default:** “Any judgment rendered or decree passed upon a default . . . may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant or the complainant's attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or the defendant failed to appear. The judicial authority shall order reasonable notice of the pendency of such written motion to be given to the adverse party, and may enjoin that party against enforcing such judgment or decree until the decision upon such written motion.” CONN. PRACTICE BOOK § 17-43(a) (2004 ed.).
- **Good Cause:** “A judgment rendered upon a default or nonsuit may be set aside only if the moving party demonstrates that he has been prejudiced by the judgment, that ‘reasonable cause’ or a ‘good cause of action or defense . . . existed at the time of the rendition of the judgment’ and that the movant was prevented by ‘mistake, accident or other reasonable cause from prosecuting the action or making the defense.’ *Steve Viglione Sheet Metal Co. v. Sakonchick*, 190 Conn. 707, 712, 462 A.2d 1037 (1983).

STATUTES:

- CONN. GEN. STATS. (2003)

§ 52-212. Reopening judgment upon default
§ 52-259c. Fee to open, set-aside, modify, extend or reargue judgment

COURT RULES:

- CONN. PRACTICE BOOK (2004 ED.)
§ 17-43. Opening judgment upon default

FORMS:

Motion for Judgment upon Default

- 2 JOEL M. KAYE ET AL. CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
Form 107.7. Judgment by Default against Corporate Defendant
Form 107.8. Judgment by Default against Individual Defendant.

CASES:

- Eastern Elevator Co. v. Scalzi, 193 Conn. 128, 131, 474 A.2d 456 (1984). “There must be a showing that (1) a good defense, the nature of which must be set forth, existed at the time judgment was rendered, and (2) the party seeking to set aside the judgment was prevented from making that defense because of mistake, accident or other reasonable cause.”
- Steve Viglione Sheet Metal Co. v. Sakonchick, 190 Conn. 707, 713, 462 A.2d 1037 (1983). “The theory underlying these rules governing the vacating of judgments is the equitable principle that once a judgment is rendered it is to be considered final . . . and should be left undisturbed by post-trial motions except for a good and compelling reason.”

WEST KEY NUMBERS:

- Judgments # 135-177.
138. Right to relief in general
139. Discretion of the court
140. Judgments which may be opened or set aside
143. Excuses for default
147. Waiver of right to relief
153. Time for application
156. Stay of proceedings on judgment
177. Objections and exceptions

ENCYCLOPEDIAS:

- 46 AM. JUR. 2D *Judgments Defaults* §§ 265-321
- James L. Buchwalter, *Annotation, Imposition Of Default Judgment Against Codefendant—Modern Treatment*, 102 ALR5th 647 (2002).
- *Annotation, Doctrine Of Res Judicata As Applied To Default Judgments*, 77 ALR2d 1410 (1961).
- James O. Pearson, *Annotation, Fraud In Obtaining Or Maintaining Default Judgment As Grounds For Vacating Or Setting Aside In State Courts*, 78 ALR3d 150 (1977).
- *Annotation, Opening Default or Default Judgment Claimed To Have Been Obtained Because Of Attorney's Mistake As To Time Or Place Of Appearance, Trial Or Filing Of Necessary Papers*, 21 ALR3d 1255 (1968).
- *Fraud In Obtaining Or Maintaining Default Judgment*, 10 POF2d 427.

TEXTS & TREATISES:

- RALPH P. DUPONT, *DUPONT ON CONNECTICUT CIVIL PRACTICE* (2001 ed.).
Chapter 17. Judgments
§ 17-43.1. Reasonable cause; Existence of good cause of

action or defense

§ 17-43.2. Reasonable cause for failure to appear

§ 17-43.3. Four month time limit, effect of

§ 17-43.4. *Audita Querela*, Writ of Use and Effect of

- JEANINE M. DUMONT, PLEADINGS AND PRETRIAL PRACTICE: A DESKBOOK FOR CONNECTICUT LITIGATORS (1998 ed.).
- RENEE BEVACQUA BOLLIER ET AL., STEPHENSON'S CONNECTICUT CIVIL Procedure (3rd ed. 1997).
- KIMBERLEY A. PETERSON, CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT (1998).

§ 96g. Reopening judgments on default

Chapter 15. Pleadings: motions against defendants who do not file pleadings.

Section III. Judgment upon default

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Section 3

Other Grounds For Default

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to defaults for failure to:

1. Make disclosures, answer interrogatories or comply with a discovery order
2. Obey pretrial orders
3. Disclose defense
4. Appear for trial
5. Comply with order of Judicial Authority

SEE ALSO:

-

DEFINITION :

- **Default:** "If a party fails to comply with an order of a judicial authority or a citation to appear or fails without proper excuse to appear in person or by counsel for trial, the party may be nonsuited or defaulted by the judicial authority." CONN. PRACTICE BOOK § 17-19 (2004 ed.).
- **Discovery:** "If any party has failed to answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production or for disclosure of the existence and contents of an insurance policy or the limits thereof, or has failed to submit to a physical or mental examination, or has failed to comply with a discovery order made pursuant to Section 13-13, or has failed to comply with the provisions of Section 13-15, or has failed to appear and testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order as the ends of justice require." CONN. PRACTICE BOOK § 13-14(a) (2004 ed.).
- **Disclosure of Defense:** "In any action to foreclose or discharge any mortgage or lien or to quiet title, or in any action upon any written contract, in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff's action and whether such defense will be made, together with a general statement of the nature or substance of such defense. If the defendant fails to disclose a defense within five days of the filing of such demand, the plaintiff may file a written motion that a default be entered against the defendant by reason of the failure of the defendant to disclose a defense. If no disclosure of defense has been filed, the judicial authority may order judgment upon default to be entered for the plaintiff at the time the motion is heard or thereafter, provided that in either event a separate motion for such judgment has been filed. The motions for default and for judgment upon default may be served and filed

simultaneously but shall be separate motions. ." CONN. PRACTICE BOOK § 13-19(2004 ed.).

- **Pretrial Procedure** "If any person fails to attend or to be available by telephone pursuant to this rule, the judicial authority may make such order as the ends of justice require, which may include the entry of a nonsuit or default against the party failing to comply and an award to the complying party of reasonable attorney's fees." CONN. PRACTICE BOOK § 14-13 (2004 ed.).

STATUTES:

- CONN. GEN. STATS. (2003)
 - § 52-212. Reopening judgment upon default
 - § 52-259c. Fee to open, set-aside, modify, extend or reargue judgment

COURT RULES:

- CONN. PRACTICE BOOK (2004 ED.)
 - § 17-42. Opening defaults where judgment has not been rendered
 - § 17-43. Opening judgment upon default

FORMS:

Motion for Judgment upon Default

- 2 JOEL M. KAYE ET AL. CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
 - Form 107.7. Judgment by Default against Corporate Defendant
 - Form 107.8. Judgment by Default against Individual Defendant.

CASES:

Reopening default

- Brill v. State of Connecticut, 26 Conn. Supp. 29, 34, 210 A.2d 451 (1965). "The court believes that a proper remedy for the defendant's frustration of the court's order is a default for failure to comply with the court's order of October 16, 1964, that depositions be taken. Such a default may, of course, be set aside upon such terms as the court may impose. Practice Book § 280 [now 14-24]. At the hearing on a motion to set aside, the court may consider the expense incurred by the plaintiff in taking Mitchell's deposition, as well as any other matters."

Reopening judgment upon default

- Automotive Twins, Inc. v. Klein, 138 Conn. 28, 34, 82 A.2d 146 (1951). "An application to open a judgment upon default is, when not based on a pure error of law, addressed to the sound discretion of the court. *Jartman v. Pacific Fire Ins. Co.*, 69 Conn. 355, 362, 37 A. 970. For this discretion to be exercised in favor of the defaulted party, it must be shown that he was prevented from appearing by "mistake, accident or other reasonable cause. The judgment should not ordinarily be opened if his failure to appear or procure a continuance resulted from his own negligence. *Schoonmaker v. Albertson & Douglass Machine Co.*, supra, 392.

The defendant's excuse for not appearing was that he was engaged in trial elsewhere. We are cognizant of the custom which has grown up of adjourning the trial of a case if, when it is reached, counsel for any party is actually engaged in the trial of another case. Such an adjournment, however, is not a matter of right. It is a matter of courtesy - a courtesy extended by both opposing counsel and the court. Its exercise calls for the reciprocal courtesy on the part of the lawyer engaged elsewhere of at least communicating the fact of his engagement to both opposing counsel and the court in advance of the time set for the trial. Under ordinary circumstances, an attorney who

fails so to advise of his inability to attend the trial thereby evinces a lack of proper respect for the court. If a default results from such failure, he has no ground for complaint. The default is the result of his own neglect."

WEST KEY NUMBERS:

- Judgments # 135-177.
 - # 138. Right to relief in general
 - # 139. Discretion of the court
 - # 140. Judgments which may be opened or set aside
 - # 143. Excuses for default
 - # 147. Waiver of right to relief
 - # 153. Time for application
 - # 156. Stay of proceedings on judgment
 - # 177. Objections and exceptions

ENCYCLOPEDIAS:

- 46 AM. JUR. 2D *Judgments*
Defaults §§ 265-321
- James L. Buchwalter, *Annotation, Imposition Of Default Judgment Against Codefendant—Modern Treatment*, 102 ALR5th 647 (2002).
- *Annotation, Doctrine Of Res Judicata As Applied To Default Judgments*, 77 ALR2d 1410 (1961).
- James O. Pearson, *Annotation, Fraud In Obtaining Or Maintaining Default Judgment As Grounds For Vacating Or Setting Aside In State Courts*, 78 ALR3d 150 (1977).
- *Annotation, Opening Default or Default Judgment Claimed To Have Been Obtained Because Of Attorney's Mistake As To Time Or Place Of Appearance, Trial Or Filing Of Necessary Papers*, 21 ALR3d 1255 (1968).
- *Fraud In Obtaining Or Maintaining Default Judgment*, 10 POF2d 427.

TEXTS & TREATISES:

- RALPH P. DUPONT, *DUPONT ON CONNECTICUT CIVIL PRACTICE* (2001 ed.).
Chapter 17. Judgments
 - § 17-43.1. Reasonable cause; Existence of good cause of action or defense
 - § 17-43.2. Reasonable cause for failure to appear
 - § 17-43.3. Four month time limit, effect of
 - § 17-43.4. *Audita Querela*, Writ of Use and Effect of
- JEANINE M. DUMONT, *PLEADINGS AND PRETRIAL PRACTICE: A DESKBOOK FOR CONNECTICUT LITIGATORS* (1998 ed.).
- RENEE BEVACQUA BOLLIET ET AL., *STEPHENSON'S CONNECTICUT CIVIL Procedure* (3rd ed. 1997).
§ 96g. Reopening judgments on default
- KIMBERLEY A. PETERSON, *CIVIL LITIGATION IN CONNECTICUT, ANATOMY OF A LAWSUIT* (1998).
Chapter 15. Pleadings: motions against defendants who do not file pleadings.
Section III. Judgment upon default

COMPILED BY:

Lawrence Cheeseman, Connecticut Judicial Branch, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Figure 3 Motion for default for failure to disclose a defense

Docket No: _____ : SUPERIOR COURT

_____ : JUDICIAL DISTRICT OF _____

v. _____ : AT _____

_____ : DATE _____

MOTION FOR DEFAULT FOR FAILURE TO DISCLOSE A DEFENSE

The Plaintiff in the above-entitled matter hereby moves that default enter against the Defendant, _____ for his failure to disclose a defense within the time prescribed by law.

THE PLAINTIFF

BY:

ORAL ARGUMENT NOT REQUESTED

TESTIMONY NOT REQUIRED

Order

The foregoing motion having been heard, it is hereby ORDERED: GRANTED/DENIED.

THE COURT

BY: _____

Judge/Clerk

Certification

I hereby certify that a copy of the above was mailed on *(date)* _____

to: (List pro se parties and counsel of record and their addresses.)

(Name) _____
(Attorney or Pro Se)

Section 4

Hearing in Damages

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to hearing in damages following a default.

SEE ALSO:

-

DEFINITION :

- "The entry of the default, however, does not preclude the defendant from raising a defense at the hearing in damages. If timely written notice is furnished to the plaintiff, the defendant may offer evidence contradicting any allegation of the complaint. The defendant may also challenge the right of the plaintiff to maintain the action or prove any matter of defense." *DeBlasio v. Aetna Life & Casualty Co.*, 186 Conn. 398, 401, 441 A.2d 838 (1982).
- **Evidence:** "In any hearing in damages upon default, the defendant shall not be permitted to offer evidence to contradict any allegations in the plaintiff's complaint, except such as relate to the amount of damages, unless notice has been given to the plaintiff of the intention to contradict such allegations and of the subject matter which the defendant intends to contradict, nor shall the defendant be permitted to deny the right of the plaintiff to maintain such action, nor shall the defendant be permitted to prove any matter of defense, unless written notice has been given to the plaintiff of the intention to deny such right or to prove such matter of defense." CONN. PRACTICE BOOK § 17-34(a) (2004 ed.)
- **Requirements of notice:** "The notices required by Section 17-34 shall be given in the manner provided in Sections 10-12 through 10-14, the original with proof of service being filed with the clerk." CONN. PRACTICE BOOK § 17-35(a) (2004 ed.)
- **Requirements of time:** "In all actions in which there may be a hearing in damages, notice of defenses must be filed within ten days after notice from the clerk to the defendant that a default has been entered." CONN. PRACTICE BOOK § 17-35(b) (2004 ed.)
- **Notice by Clerk:** "The clerk shall give notice of entry of a default, in the case of a defendant who has filed an appearance, in person to the defendant or the defendant's attorney, by mail, or by electronic notice, and in the case of a nonappearing defendant, by mailing such notice to the defendant at his or her last known address. The clerk shall enter on the docket the date when the clerk gives, mails or sends the notice, and said period of ten days shall run from said date." CONN. PRACTICE BOOK § 17-36 (2004 ed.).
- **Notice of defenses:** "The notice shall not contain a general denial, but shall specify which, if any, of the allegations, or parts thereof, of the complaint will be controverted; and only those allegations should be specified which it is intended to controvert by proof. The denial of the right of the plaintiff to maintain the action must go to the plaintiff's

right to maintain it in the capacity in which the plaintiff sues, and not otherwise controvert the right of action. Any new matter by way of confession and avoidance must be specified. The defense of contributory negligence must be specified and the grounds stated. Partial defenses must be specified in the same manner as complete defenses." CONN. PRACTICE BOOK § 17-37 (2004 ed.).

STATUTES:

- CONN. GEN. STATS. (2003)
 - § 52-220. Hearing in damages; when to jury
 - § 52-221. Hearing in damages. Evidence. Notice

COURT RULES:

- CONN. PRACTICE BOOK (2004 ED.)
 - § 17-34. Hearings in damages; Notice of defenses
 - § 17-35. —Requirements of notice; Time
 - § 17-36. —Notice by clerk
 - § 17-37. —Notice of defenses to be specific
 - § 17-38. —Amending notice of defense
 - § 17-39. —No reply allowed
 - § 17-40. —Evidence to reduce damages
 - § 17-41. —Relief permissible on default

CASES:

- DeBLASIO v. AETNA LIFE & CASUALTY CO., 186 Conn. 398, 400-401, 441 A.2d 838, (1982). “The entry of the default, however, does not preclude the defendant from raising a defense at the hearing damages. If timely written notice is furnished to the plaintiff, the defendant may offer evidence contradicting any allegation of the complaint. The defendant may also challenge the right of the plaintiff to maintain the action or prove any matter of defense. Practice Book 367[now 17-34]; see also General Statutes 52-221; *Bonner v. American Financial Marketing Corporation*, 181 Conn. 57, 58, 434 A.2d 323 (1980); *Upton v. Windham*, 75 Conn. 288, 289-90, 53 A. 660 (1902).”

FORMS:

- Affidavit of debt

WEST KEY NUMBERS:

- Judgments # 135-177.
 - # 138. Right to relief in general
 - # 139. Discretion of the court
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- James O. Pearson, *Annotation, Fraud In Obtaining Or Maintaining Default Judgment As Grounds For Vacating Or Setting Aside In State Courts*, 78 ALR3d 150 (1977).
- *Annotation, Opening Default or Default Judgment Claimed To Have*

Been Obtained Because Of Attorney's Mistake As To Time Or Place Of Appearance, Trial Or Filing Of Necessary Papers, 21 ALR3d 1255 (1968).

- *Fraud In Obtaining Or Maintaining Default Judgment*, 10 POF2d 427.

TEXTS & TREATISES:

- RALPH P. DUPONT, *DUPONT ON CONNECTICUT CIVIL PRACTICE* (2001 ed.).

Chapter 17. Judgments

§ 17-34.1. Hearing in damages. P.B. §§ 17-34 through 17-41

—Markings for this list

§ 17-34.2. Notice of defense; Scope of and defenses

§ 17-34.3. Hearing in damages; Evidence; Notice

§ 17-34.4. Hearing in damages; Jury

§ 17-34.5. Hearing in damages list; Motion to strike

§ 17-34.6. Time within which to claim jury trial; Hearing damages

§ 17-35.1. Ten days allowed within which to file notice of defenses

- 1 WESLEY W. HORTON AND KIMBERLY A. KNOX, *CONNECTICUT PRACTICE SERIES, CONNECTICUT SUPERIOR COURT RULES* (2004 Ed.).
Authors' comments following §§ 17-34 to 17-41
- JEANINE M. DUMONT, *PLEADINGS AND PRETRIAL PRACTICE: A DESKBOOK FOR CONNECTICUT LITIGATORS* (1998 ed.).
- RENEE BEVACQUA BOLLIET ET AL., *STEPHENSON'S CONNECTICUT CIVIL Procedure* (3rd ed. 1997).
§ 102. Hearing in damage

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